



PATENT  
Attorney Docket No. 05725.1239-00

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**In re Application of:**

Xavier BLIN et al.

Application No.: 10/656,146

Filed: September 8, 2003

For: COSMETIC COMPOSITION  
COMPRISING A HYDROCARBON  
OIL AND A SILICONE OIL

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

## **RESPONSE TO RESTRICTION REQUIREMENT**

In response to the Office Action dated March 26, 2007, the period for response having been extended to May 26, 2007, by the request for extension of one month and fee payment filed concurrently herewith, Applicants respectfully request reconsideration of this application in view of the election and remarks below.

**REMARKS**

## I. Restriction Requirement

In the Office Action, the Examiner requires that the claims be restricted to one of the following four groups:

I. Claims 1-26 and 114-117, drawn to a cosmetic composition comprising at least one high viscosity pheynylsilicone oil greater or equal to 500cSt and at least one non-volatile hydrocarbon oil having a MW of more than 500 g/mol, classified in class 424, subclass 63.

II. Claims 27-59 and 114-117, drawn to a cosmetic composition comprising at least one high viscosity pheynylsilicone oil greater or equal to 500cSt, at least one non-volatile hydrocarbon oil having a MW of more than 500 g/mol and at least one rheological agent chosen from silicone waxes classified in class 424, subclass 70.12.

III. Claims 60-88 and 114-117, drawn to a cosmetic composition comprising at least one high viscosity pheynylsilicone oil greater or equal to 500cSt, at least one non-volatile hydrocarbon oil having a MW of more than 600 g/mol and a particular phase, classified in class 424, subclass 64.

IV. Claims 89-117, drawn to a cosmetic composition comprising at least one high viscosity pheynylsilicone oil greater or equal to 500cSt and at least one non-volatile hydrocarbon oil having a MW of more than 600 g/mol, classified in class 424, subclass 401.

Office Action at 2.

Applicants respectfully traverse the restriction requirement, as set forth above and on pages 2-4 of the Office Action. However, to be fully responsive, Applicants elect, with traverse, the subject matter of Group I, comprising claims 1-26 and 114-117.

Applicants respectfully refer the Examiner to M.P.E.P. § 803, which sets forth the criteria and guidelines for Examiners to follow in making proper requirements for restriction. The M.P.E.P. instructs the Examiner as follows:

If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.

M.P.E.P. § 803 (emphasis added).

Here, the Examiner has not shown that examining Groups I-IV together would constitute a serious burden. Rather, the Examiner admits that Groups I-IV are directed to related cosmetic compositions. See Office Action at 3. The Examiner contends that the above related groups can also be distinct, but does not specify what serious burden

will be placed on the Examiner if she were to proceed in examining the groups together, as required by M.P.E.P. § 803. Further, while a *prima facie* showing of a burden can be demonstrated, when there is separate classification, here, all four groups, as defined by the Examiner, belong to the same class (424). *See* M.P.E.P. § 803(II).

Additionally, Applicants submit no serious burden would exist in light of the requirement of rejoinder. *See* M.P.E.P. § 821.04. In view of all of the above, Applicants respectfully request withdrawal of the restriction requirement.

The Examiner asks for an "identification of the claims encompassing the elected invention." Office Action at 4. Applicants note that at least claims 1-26 and 114-117 specifically encompass the elected invention.

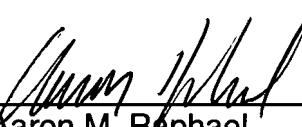
If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: May 8, 2007

By: \_\_\_\_\_

  
Aaron M. Raphael  
Reg. No. 47,885